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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2006

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Civil Revision Petition (NPD) No.58 of 2006
and C.M.P.No.439 of 2006
and V.C.M.P.No.22 of 2006

Syed Nusarathullah .... Petitioner

Vs.

1. Natarajan
2. A.Visalakshi Ammal
3. A.Nithyanandan
4. A.Dhandapani
5. A.Bhjojarajan
6. A.Gopalakrishnan
7. A.Nandakumar
8. A.Sukumaran
9. A.Selvaraj ... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decretal order, dated 29.12.2005, made in I.A.No.632 of 2005 in O.S.No.2209 of 1993 on the file of Second Additional District Munsif Court, Coimbatore.

For petitioner: Mr.B.Ramamurthy

For respondent: Mr.N.Mani
1 to 3 & 5 to 8

O R D E R

The Civil Revision Petition is filed praying to set aside the fair and decretal order, dated 29.12.2005, passed by the learned Second Additional District Munsif, Coimbatore, in I.A.No.632 of 2005 in O.S.No.2209 of 1993.

2.Heard the learned counsel for the petitioner as well as the respondents.

3.The suit in O.S.No.2209 of 1993 was filed by the Respondents/plaintiffs before the Court of the District Munsif, Coimbatore, praying for a decree of permanent injunction restraining the 3rd Defendant in any manner altering the physical features of the suit property, mandatory injunction directing

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the 3rd Defendant to remove his belongings kept in Item No.2 of the schedule of property, permanent Injunction restraining 3rd Defendant and his henchmen from in any manner trespassing into the suit property, directing the defendants to pay the costs of the suit and for grant of such other reliefs deemed fit and necessary in the circumstances of the case. Subsequently, the plaintiffs had prayed for an amendment of the prayer in I.A.No.1005 of 1996 and that was ordered as prayed for by an order, dated 15.03.2001, adding the following prayer for :-

'Directing the defendants to be ejected from item-1 of plaint schedule property and vacant possession of the same given to the plaintiffs'

4.It is the case of the petitioner that the suit which was originally filed in the Principal District Munsif Court, Coimbatore, was subsequently transferred to the First Additional Sub-ordinate Judge, Coimbatore, and later to the Second Additional District Munsif Court, Coimbatore.

5.It is averred by the petitioner herein that he was not aware of the transfer of the case from one Court to another and also that his counsel did not inform him. Therefore, an exparte decree was passed on 13.04.2005 and subsequently EP.No.89 of 2005 was filed for delivery of possession of the property mentioned in the suit schedule.

6. It is also the case of the petitioner in the present Civil Revision Petition that after the transfer of the suit, no notice was served on him. Further, it is the case of the petitioner that he was undergoing medical treatment and that he could not contact his counsel and therefore he did not know about the ex-parte decree passed against him on 13.04.2005 in OS.No.2209 of 1993 on the file of Second Additional District Munsif Court, Coimbatore. It is his further case that he had filed I.A.No.632 of 2005 in O.S.No.2209 of 1993, under section 5 of the Limitation Act, to condone the delay of 185 days in filing an application to set aside the exparte decree, dated 13.04.2005.

7.He further states that on an erroneous appreciation of facts and law, the learned District Munsif by an order, dated 29.12.2005, dismissed the interim application in I.A.No.632 of 2005. Against the said order, he has preferred the present Civil Revision Petition. By a Civil Miscellaneous Petition No.439 of 2006, he has also prayed for stay of all further proceedings in E.P.No.89 of 2005 on the file of Principal District Munsif, Coimbatore, pending disposal of the present Civil Revision Petition.

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8.It is the case of the respondent that he had filed the suit O.S.No.2209 of 1993 for injunction and other reliefs and also for recovery of possession against the present petitioner and others. He further states that the suit was filed before the District Munsif, Coimbatore, wherein the petitioner had entered appearance through his counsel and contested the case. Subsequently, the suit was transferred to Sub-court, Coimbatore, only in the year 2002 and was renumbered as O.S.No.204 of 2002, in which proceedings also, the petitioner in the present Civil Revision Petition had appeared through his counsel, on 05.02.2003, before the sub-court and the above suit was adjourned several times. Inspite of the suit being adjourned several times the petitioner had not filed the written statement. On 01.07.2003, when the suit was taken up for hearing, the petitioner did not appear and he was called, absent and set exparte. However, the petitioner was all along represented by his counsel. It is further stated that the suit was once again transferred to the District Munsif Court, Coimbatore and on 13.04.2005 the suit was decreed exparte.

9.The respondents/plaintiffs had filed the execution petition for executing the decree. Only thereafter, on 14.11.2005, the petitioner had filed an application in I.A.No.632 of 2005, under Section 5 of Limitation Act, to condone the delay of 185 days in filing the application to set aside the exparte decree along with an application to set aside the exparte decree. It is the case of the respondent that the petitioner herein had filed three applications in E.A.No.434 to 436 of 2005 before the Execution Court. i.e. Principal District Munsif Court, Coimbatore, to set aside the exparte order, to recall warrant and for stay respectively. All the applications were dismissed by the learned Principal District Munsif and delivery of property was ordered on 13.12.2005, following which the respondents/plaintiffs herein had taken delivery of the suit property on 06.01.2006. Further, the respondents had denied the allegations made by the petitioner that he was not aware of the transfer of the above suit from the Sub-court to the District Munsif Court and further denies mala fides of the petitioner in filing the petition to condone the delay to set aside the exparte decree in which the respondents contended that it shows the recalcitrant attitude of the petitioner and that he has not come to this court with clean hands and, therefore, the respondents have prayed that this court may be pleased to vacate the order granted on 06.01.2006 and therefore the petitioner herein is not entitled to any equitable relief in this revision.

10. Relying on Shakuntala Devi Jain Vs. Kuntal Kumari, AIR 1969 Supreme Court 575, State of West Bengal Vs. The

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Administrator, Howrah Municipality, AIR 1972 Supreme Court 749, the Supreme Court in N.BALAKRISHNAN Vs. M.KRISHNAMURTHY (1998) 7 SCC 123 has held as follows:-

" 9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The Law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life span must be fixed for each

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> remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.
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> 12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice."

11. In this case, It is true that there has been a delay of 185 days in filing the application in IA No.632 of 2005 in filing the application to set aside the exparte decree. In the light of the aforesaid decisions as well as the law laid down by the apex Court in its various decisions relating to condonation of delay, the words " Sufficient Cause" found in section 5 of the Limitation Act, 1963, should receive a liberal construction so as to advance substantial justice and while giving opportunity to the Revision Petitioner, the right accrued to the respondent is also to be kept in view and balance has to be struck and has to be applied. In the present case, it is found that consequent to the order passed in the Execution Petition, the respondents had taken delivery of the suit property on 06.01.2006 itself.

12. In view of the above circumstances, this court finds it appropriate to pass an order directing the learned II Additional District Munsif Court, Coimbatore, to allow I.A.No.632 of 2005 filed by the petitioner to condone the delay of 185 days in filing the application to set aside the exparte decree, dated 13.04.2005, on the petitioner making a payment of Rs.5000/- to the respondents as costs within two weeks from the date of receipt of a copy of this order. On such proof being shown to the satisfaction of the Court, the suit in O.S.No.2209 of 1993 may be taken on file and decided on merits, in accordance with law, within a period of four months thereafter.

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With the above directions, the present Civil Revision Petition is allowed. Consequently, connected CMP and VCMP are closed. No costs.

13.02.2006

ssm

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Second Additional District Munsif
Coimbatore.

+ one cc to Mr.B.Ramamoorthy, Advocate Sr.No.6343
+ one cc to Mr.N.Mani, Advocate Sr.No.6539

JRG (CO)
RSM/21.2.2006

Pre-delivery
Judgment in CRPNPD.No.58 of 2006
.and C.M.P.No.439 of 2006
and V.C.M.P.No.22 of 2006

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